

This testimony is supplemented, upon the question of intent, by the affidavits of several respectable merchants of New York city, who affirm that the defendant told them in the fall of 1884 that it was his purpose to remove there the ensuing spring and reside there permanently. These statements are uncontradicted. Opposed to them the plaintiff presents a number of facts and circumstances which, alone and unexplained, might lead to presumptions in support of the theory upon which the attachment is based. But speculation and conjecture should never be permitted to take the place of evidence. An inference, though plausible, must give way when confronted with direct and positive proof. At the time the attachment was granted the defendant and his family had been for over five weeks in the city of New York. He had no other domicile. He had given up his home in Paris. It would require an ingenuity of more than ordinary capacity to discover for the defendant a residence other than New York city on the twenty-second day of April, 1885.

The circumstances disclosed by the papers naturally incline the court to sustain the attachment, but with the weight of evidence so overwhelmingly in his favor there can be no doubt as to the right of the defendant to have it vacated. The motion is granted.

GRAIN-DRILL MANUF'G Co. v. REINSTEDLER.¹

(Circuit Court, E. D. Missouri. September 28, 1885.)

PATENTS—PRACTICE—HOLDING CASE OPEN FOR DECISION UPON APPEAL TAKEN IN ANOTHER SUIT.

Where two suits were brought for the infringement of a patent, in different circuits,—one against the manufacturer of the infringing device, and the other against a dealer,—and the former was decided in the defendant's favor, and the latter thereafter, after remaining pending over four years, was heard, and was submitted upon the same evidence taken in the other case, and the complainant asked that the case might be allowed to remain open until an appeal from the decree in the suit against the manufacturer could be heard and determined, *held*, that there being no special reasons for granting the request, the case could not be kept standing open any longer, and that the bill should be dismissed.

In Equity.

The defense in this case was substantially the same as in the Indiana case referred to below, and the same evidence was introduced in both cases.

Wood & Boyd, for complainant.

Stein & Peck, for defendant.

BREWER, J., (*orally*.) The bill in this case will be dismissed. It is an action against a dealer for infringement. The action has been

¹Reported by Benj. F. Rex, Esq., of the St. Louis bar.

pending in this court more than four years. In an action brought in the circuit court of Indiana against the manufacturer, a decree has been entered in favor of the defendant dismissing the bill.¹ The only application here is that this case shall stand open until an appeal from that decree shall be heard and determined in the supreme court. No special reasons are shown, and under such circumstances this court ought not to keep this case standing against the defendant for possibly three or four years. The bill will be dismissed.

¹ Grain Drill Manuf'rs Co. v. Rude, 23 Fed. Rep. 348.

NORRINGTON v. MERCHANTS' NAT. BANK.

(Circuit Court, D. Rhode Island. September 29, 1885.)

PATENTS FOR INVENTIONS—NOVELTY—INFRINGEMENT—POCKET CHECK-BOOK.

Letters patent No. 203,365, granted to Henry H. Norrington, May 7, 1878, for an improved pocket bank check-book, held valid, and infringed by defendant.

In Equity.

Benj. F. Thurston and Wilmarth H. Thurston, for complainant.

Frost & Coe, for defendant.

COLT, J. This bill in equity is brought for alleged infringement of letters patent granted to the complainant, dated May 7, 1878, and numbered 203,365, for improvement in bank check-books. The invention is adapted especially to pocket check-books. In a check-book it is necessary that there should be some provision for keeping a record of the checks drawn, of the amounts deposited, and the balance on deposit, in order that the user may always have at hand a full and accurate account of his transactions with the bank. A pocket check-book commonly contains but one check to a page. Formerly the record of checks and deposits was usually made by constructing each check with a stub at its rear end, from which stub the check was torn when used. The first improvement to which we are referred appears in the Waring patent. In the Waring check-book two checks are folded over upon each stub-sheet, which is of the same size as the checks. Upon one side of the stub-sheet is kept a record of the two checks drawn, and upon the other side an account of the deposits made and balance in the bank. A disadvantage attending the use of the Waring book arises from the fact that the two checks being folded down upon the stub-sheet renders it necessary, in order to obtain access to one side of such stub-sheet at any time before both checks have been torn out, to fold out the superimposed check or checks, and afterwards to fold the same back into place. It seems also that the book, owing to its construction, is quite expensive. The next improvement in this class